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Attorneys for Defendants
BEASLEY MEDIA GROUP, LLC (erroneously sued as BEASLEY BROADCAST GROUP, INC.) and MELISSA EANNUZZO

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MATTHEW HOGAN,

Plaintiff,

vs.

MATTHEW J. WEYMOUTH, PATRICK C. CHUNG, PRO SPORTORITY (ISRAEL) LTD., KARL RASMUSSEN, BEASLEY BROADCAST GROUP, INC., MELISSA EANNUZZO, and DOES 1-10,

Defendants.

Case No. **2:19-cv-02306-MWF-AFMx**

NOTICE OF MOTION AND SPECIAL MOTION BY DEFENDANTS BEASLEY MEDIA GROUP, LLC AND MELISSA EANNUZZOTO STRIKE PLAINTIFF'S FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION

Date: July 8, 2019
Time: 10:00 a.m.
Dept.: 5A

Assigned to the Hon. Michael W. Fitzgerald

Action Filed: March 27, 2019

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 8, 2019, at 10:00 a.m. or as soon thereafter as this matter may be heard in Courtroom 5A of the above-entitled court, located at 350 West 1st Street, Los Angeles, CA 90012, Beasley Media Group, LLC (erroneously sued as Beasley Broadcast Group, Inc.)[1] and Melissa Eannuzzo (collectively, "Beasley") will and hereby do move this Court, pursuant to Code of Civil Procedure § 425.16, for an order striking the First, Second, Third, and Fourth Causes of Action in the Complaint brought by Plaintiff Matthew Hogan ("Plaintiff"), which are the only claims asserted against Beasley. *See* Compl. ¶¶ 62-93.

Because each of these causes of actions arise from Beasley's conduct in furtherance of the exercise of free speech about a matter of public interest, they fall within the scope of California Code of Civil Procedure § 425.16 (the "SLAPP statute"). *See* Memorandum of Points and Authorities, Section III. Consequently, under the SLAPP statute, the burden shifts to Plaintiff to establish a probability that he will prevail on each of his claims. *See* C.C.P. § 425.16(b)(1); Memorandum, Section IV. Plaintiff cannot meet his burden for each of the following reasons:

1. Plaintiff's cause of action for defamation is barred as a matter of law because the statements made by Beasley are substantially true and Plaintiff cannot demonstrate that the statements are defamatory.

2. Plaintiff's cause of action for disclosure of private facts fails because Beasley did not disclose any actionable "private" information.

3. Plaintiff's cause of action for false light is superfluous and fails for the same reasons as his defamation claim.

[1] Plaintiff named Beasley Broadcast Group, Inc. as a defendant; however, Beasley Broadcast Group, Inc. is the indirect parent corporation of Beasley Media Group, LLC, which owns and operates radio station, WBQT-FM 96.9, known as Hot 96.9 and www.hot969boston.com.

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4. Plaintiff's cause of action for intentional infliction of emotional distress is also duplicative of his defamation claim. Plaintiff also fails to allege conduct by Beasley that could be considered extreme and outrageous and fails to provide any factual support for any alleged severe emotional distress.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on May 15, 2019.

This Motion is based on this Notice; on the attached Memorandum of Points and Authorities; on the concurrently filed Request for Judicial Notice, Declarations of Alan Markesich and Diana Palacios with Exhibits 1-5, and on any other matters of which this Court may take judicial notice; on all pleadings, files and records in this action; and on such argument as may be received by this Court at the hearing on this Motion.

DATED: June 3, 2019

DAVIS WRIGHT TREMAINE LLP
SEAN M. SULLIVAN
DIANA PALACIOS

By: /s/ Sean M. Sullivan
Sean M. Sullivan

Attorneys for Defendants

BEASLEY MEDIA GROUP, LLC (erroneously sued as BEASLEY BROADCAST GROUP, INC.) and MELISSA EANNUZZO

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Statutes

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I. SUMMARY OF ARGUMENT

During one of the biggest sporting events of this year – Super Bowl LIII – the New England Patriots faced off with the Los Angeles Rams. While the two teams lead in scoring offense throughout the season, during the game, scoring was at premium, increasing the focus on the defenses for both teams, and in the Patriots' case, safety Patrick Chung – a Super Bowl veteran and a team captain. In the third quarter of the game, while clinging to a 3-0 lead, Chung, however, had to leave the game after suffering an arm injury. After Chung's exit, the Patriot's defense dedicated the rest of the second half of the game to Chung, with the Patriots ultimately prevailing. It was later confirmed that Chung had broken his arm. Chung's injury sparked a wave of media reports across the nation both during and after the game, including widespread discussion about Chung's health and future.

A few days after the game, Chung posted onto his social media accounts screenshots of a text message exchange that appeared to be between Plaintiff Matthew Hogan ("Plaintiff") and Chung, in which Plaintiff called Chung a "bitch." Different news outlets, including Beasley Media Group, LLC, and Melissa Eannuzzo (collectively, "Beasley"), reported on this post. While Plaintiff does not dispute that he called Chung a "bitch," or even that he sent or received the texts in question, he claims the stories are false because, unbeknownst to Beasley at the time, he did not send the texts directly to Chung. Plaintiff then filed this lawsuit. Fortunately, California's SLAPP statute provides a mechanism for protecting against abusive lawsuits that target protected speech. C.C.P. § 425.16. Because Plaintiff's claims arise directly from acts in furtherance of speech about matters of public interest, the SLAPP statute shifts the burden to him to present admissible evidence substantiating each of his claims. *Id.* Plaintiff cannot meet his burden.

First, Plaintiff's defamation claim fails because the statements are substantially true. Nothing stated by Beasley altered the gist and sting of the statements Plaintiff made about Chung. Moreover, it is well-established that a

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plaintiff complaining about allegedly injurious speech must demonstrate that the statement is "defamatory" – *i.e.*, that it materially injures his reputation in the community. Plaintiff has not, and cannot, make such allegations here.

Second, Plaintiff cannot state a disclosure of private facts claim because he has not alleged any *private* facts that Beasley allegedly disclosed. By Plaintiff's own allegations, Beasley only republished information that was already public, which cannot give rise to a claim.

Third, Plaintiff cannot assert a claim for false light because it is duplicative of his defamation claim and because substantial California precedent holds that any claim based on an allegedly false publication must be evaluated under the same standards as defamation claims. Thus, Plaintiff's false light claim not only is superfluous because it merely duplicates his defamation claim, but it also fails for the same reasons his defamation claim fails.

Finally, Plaintiff's claim for intentional infliction of emotional distress fails because it too is merely duplicative of his defamation claim. Plaintiff's emotional distress claim also fails because he fails to allege conduct by Beasley that could be considered extreme and outrageous, or to provide any factual allegations supporting any alleged severe emotional distress he has suffered.

Accordingly, Beasley respectfully requests that this Court strike each of the causes of action alleged against Beasley with prejudice, and award Beasley its attorneys' fees and costs incurred in defending against this meritless lawsuit. C.C.P. § 425.16(c).

II. STATEMENT OF FACTS[2]

A. Relevant Parties

During the relevant period, Plaintiff worked for the Los Angeles Rams as one of eight ticket sales account executives. Compl. ¶ 2.

[2] To the extent any of the statements below come from Plaintiff's Complaint, Beasley accepts them as true only for purposes of this motion.

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Beasley Media Group, LLC owns and operates WBQT-FM 96.9, known as Hot 96.9, which is a Boston-based radio station that also publishes podcasts of some of its shows. It also owns and operates the station's website www.hot969boston.com. Declaration of Alan Markesich ("Markesich Decl.") ¶¶ 2-3. One of its podcasts is the GetUP Crew, which includes defendant Melissa Eannuzzo. *Id.* ¶ 4.

B. Background

This year's Super Bowl was between the New England Patriots and the Los Angeles Rams. In the third quarter, Patriots safety Patrick Chung – one of the Patriot's most high profile and important defenders – hurt his arm attempting tackle. *See* Declaration of Diana Palacios ("Palacios Decl.") ¶ 2, Ex. 3. During and after the game, the media reported on Chung's injury, describing his "valiant" walk off the field, rather than being carted off, how he watched the rest of the game from sidelines and celebrated with his team, and the surgeries he would have to undergo after the game. *Id.* ¶¶ 2-4, Ex. 3-5.

A few days after the Super Bowl, Chung posted on his Instagram and Facebook pages screenshots of a text message exchange (the "Post"). Compl. ¶¶ 34, 36. In his Instagram post, Chung stated:

> Matt Hogan from the @rams organization. This is disrespectful of you. I would never wish or say anything like this to anyone after they just broke their arm. You should be ashamed bro. Can't even believe it. But I pray for happiness and good health for you because a real man.

Compl. ¶ 35.

That same day, Beasley published an article on www.hot969boston.com that linked to Chung's Instagram post (the "Article"). *See* Compl., Ex. D. The Article was entitled, "Patrick Chung Goes After Rams Executive Who Mocked His Injury." *Id.* The article in its entirety stated:

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> Patrick Chung just got into it with the Rams organization after breaking his arm in the Superbowl. Chung posted screen shots of a text conversation between he and Matt Hogan (apparently an account executive in ticket sales) that started with Hogan calling him a "b**ch."

Id. A few days later, the GetUp Crew had a segment on Chung's Post (the "Podcast"), where Eannuzzo said, "Apparently somebody from the Rams front office sent him a text message, and said 'Patrick Chung's a bitch.'" Markesich Decl., Exs. 1-2. Beasley also tweeted from the Hot 96.9 Twitter account, "The Super Bowl drama didn't end on Sunday as Patrick Chung goes off on the Rams," and included a link to the Podcast.[3] Compl., Ex. F.

C. This Lawsuit

On March 27, 2019, Plaintiff filed this lawsuit against Beasley, Matthew J. Weymouth, Patrick C. Chung, Pro Sportority (Israel) Ltd, Karl Rasmussen. According to Plaintiff, the text messages that Chung posted on his Instagram and Facebook accounts were text messages between Weymouth and himself and not between Chung and himself. Compl. ¶ 34. He also claims that he was not a "Rams executive." *Id.* ¶ 51.

Based on these purported falsities, he alleges five causes of action against Beasley: (1) defamation, (2) disclosure of private facts; (3) false light publicity; and (4) intentional infliction of emotional distress. He has asserted a fifth cause of action for civil harassment only against Weymouth.

All of Plaintiff's claims against Beasley arise from two statements he claims were false: (1) that he was misidentified as a "Rams Executive" instead of a "ticket

[3] While not entirely clear from the Complaint, Plaintiff does not appear to (nor could he) claim that the tweet's text stating that "The Super Bowl drama didn't end on Sunday as Patrick Chung goes off on the Rams," is false. Rather Plaintiff's claim appears to focus solely on the fact that the Podcast was linked to the tweet.

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sales account executive"; and (2) that the text messages between Weymouth and Plaintiff were reported to be between Chung and Weymouth. *See* Compl. ¶ 51.

III. SECTION 425.16 APPLIES TO PLAINTIFFS' CLAIM

In 1992, the California Legislature enacted Code of Civil Procedure § 425.16 "to nip SLAPP litigation in the bud[,]" by quickly disposing of meritless claims that target the exercise of free-speech rights. *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036, 1042 (1997). Under the statute, any "cause of action against a person arising from any act … in furtherance of a person's right of … free speech … in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." C.C.P. § 425.16(b)(1). Reacting to court rulings that interpreted the statute too narrowly, the Legislature amended the law in 1997 to ensure that it "shall be construed broadly." C.C.P. § 425.16 (a); *Briggs v. Eden Council*, 19 Cal. 4th 1106, 1119-21 (1999).[4]

Courts use a two-step process to evaluate SLAPP motions. First, the defendant must "make a prima facie showing that the plaintiff's suit arises from an act by the defendant made in connection with a public issue in furtherance of the defendant's right to free speech under the United States or California Constitution." *Sarver v. Chartier*, 813 F.3d 891, 901 (9th Cir. 2016) (quotation omitted). "Second, if the defendant has made such showing," then the court will "evaluate whether the plaintiff has established a reasonable probability that the plaintiff will prevail on his or her claim." *Id.* (quotation and alterations omitted omitted). If the plaintiff cannot meet this burden, his claims must be stricken. *Id. See also* C.C.P. § 425.16(b)(1).

[4] It is well established that defendants may bring SLAPP motions against state law claims in federal court. *See Makaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1181 (9th Cir. 2013).

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A. Plaintiff's Claims Arise from Protected Conduct under Section 425.16.

All of Plaintiff's claims against Beasley are based on the content of the Article and Podcast. Compl. ¶¶ 48-49. Thus, the claims fall within Section 425.16(e)(3), because they arise from writings and statements "made in … a public forum in connection with an issue of public interest." *See Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252 (2017) (defendant's "postings on his Facebook page" and statements on the radio were made in public forum under (e)(3)).

Plaintiff's claims also fall within Subsection (e)(4), which applies to "conduct in furtherance of the exercise of … the constitutional right of free speech in connection with a public issue or an issue of public interest." C.C.P. § 425.16(e)(4). As courts repeatedly have made clear, "news reporting is free speech" for purposes of the SLAPP statute. *Sipple v. Found. For Nat. Progress*, 71 Cal. App. 4th 226, 240(1999). *See also Carver v. Bonds*, 135 Cal. App. 4th 328, 342 (2005) ("[s]tating facts and opinions about plaintiff was plainly" conduct protected under Subsection (e)(4)).

B. Beasley's Speech Was in Connection with Matters of Public Interest.

Consistent with the Legislature's express mandate, the statute's definition of "a public issue or an issue of public interest" has been applied broadly. *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 808 (2002) ("public interest" requirement, "like all of section 425.16, is to be construed broadly"). An issue of public interest "is any issue in which the public is interested." *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008). "In other words, the issue need not be 'significant' to be protected … – it is enough that it is one in which the public takes an interest." *Id.* This broad standard is easily met here.

It is evident from the Complaint's allegations that the Post was viewed by thousands of people and drew several "comments," "likes," and "shares." Compl. ¶ 41; Ex. D. *See Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 695 (2012) (the

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"fact that [defendant's] posts drew numerous comments" showed "considerable public interest"). Thus, Beasley's reporting of the Post is in the public interest.

Further, the requirement is met independently because the Podcast and Article's subject matter addresses issues of public interest. As the Ninth Circuit recognizes, this inquiry focuses on "whether the *broad topic* of defendant's conduct, *not the plaintiff*, is connected to a public issue or an issue of public interest." *Doe v. Gangland Prods., Inc.*, 730 F.3d 946, 956 (9th Cir. 2013) (emphases added). Thus, in assessing the public interest, the court properly focuses on the broad topic of the speech, not the individual plaintiff. *E.g.*, *Hunter v. CBS Broad., Inc.*, 221 Cal. App. 4th 1510, 1527 (2013) (selection of weather anchor for local news program was "in connection with" weather reporting, a matter of public interest); *Traditional Cat Ass'n, Inc. v. Gilbreath*, 118 Cal. App. 4th 392, 397 (2004) (internal squabble between leaders of cat-breeding organization satisfied public interest standard); *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 143-44 (2011) (SLAPP statute applied to use of names in script because it related to a popular television show).

Here, the subject of the Article and Podcast were text message comments made "in connection with" Patrick Chung's arm injury that caused him to exit Super Bowl LIII, one of the most watched sporting events in the United States. Certainly, "there can be no question that . . . accounts of [past] Super Bowls . . . constituted publication of matters in the public interest." *Montana v. San Jose Mercury News, Inc.*, 34 Cal. App. 4th 790, 794 (1995). More broadly, it is well-established that sports – football in particular – is a topic of widespread public interest. *See, e.g., McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 110 (2007) (in SLAPP context, holding college football coach was a public figure and his firing was "a topic of widespread public interest"); *Maloney v. T3Media, Inc.*, 94 F. Supp. 3d 1128, 1134 (C.D. Cal. 2015) (in SLAPP context, holding that photographs depicting "NCAA sports history" "fall within the realm of an issue of

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public interest") *aff'd*, 853 F.3d 1004 (9th Cir. 2017); *Friedman v. DirecTV*, 262 F. Supp. 3d 1000, 1004 (C.D. Cal. 2015) (in SLAPP context, holding that fantasy football was of widespread public interest). *See also Moore v. University of Notre Dame*, 968 F. Supp. 1330, 1337 (N.D. Ind. 1997) (noting "football, and specifically Notre Dame football is a matter of public interest").

This is especially true here where Chung's injury was the subject of significant media coverage. *See* Palacios Decl., Exs. 3-5. These stories emphasized the significance of Chung's role in New England Patriots, the effect it had on the team (which ultimately was the Super Bowl LIII champion), and the effect it had on Chung himself. *Id.* As one reporter put it, Chung "is a central cog of New England's secondary. His absence will be felt down the stretch of Super Bowl LIII." Ex. 3 at 6. This media coverage demonstrates that Chung's injury is a matter of public concern.

Nor does it matter that Plaintiff might have been a private person because he was involved in a matter of public interest – Chung's injury. In *Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1347 (2007), for example, the Court of Appeal held that a broadcast interview of Marlon Brandon's housekeeper, who was named in his will, constituted conduct in connection with a public issue or an issue of public interest. As the court explained, "[a]lthough [the housekeeper] was a private person and may not have voluntarily sought publicity or to comment publicly on Brando's will, she nevertheless became involved in an issue of public interest by virtue of being named in Brando's will." Similarly, here, because of the public's fascination with the Super Bowl and Chung's injury in particular, Beasley's reporting about Chung's Post "contribute[d] in some manner to a public discussion of the topic." *Id.* at 1347.

Under these circumstances, there can be no serious dispute that the Article and Podcast were in connection with a matter of widespread public interest.

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IV. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING

Because the SLAPP statute applies to Plaintiff's claims, the burden shifts to him to establish a probability of prevailing. C.C.P. § 425.16(b)(1). He "must show that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." *Kearney v. Foley & Lardner, LLP*, 582 F.3d 896, 907 (9th Cir. 2009) (quotation omitted). *See also Sarver*, 813 F.3d at 902-03 (plaintiff opposing SLAPP motion must "state and substantiate a legally sufficient claim") (quotation omitted). Plaintiff cannot meet this burden.

A. Plaintiff's Defamation Claims Fail as a Matter of Law.

To state a defamation claim, Plaintiff must show the following: "(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." *Taus v. Loftus*, 40 Cal.4th 683, 720 (2007). Here, Plaintiff's claim fails for two reasons.

1. The Statements Are Substantially True.

The First Amendment and the SLAPP statute both place the burden on the plaintiff to show that each complained-of statement is materially false. *Vogel v. Felice*, 127 Cal. App. 4th 1006, 1022-23 (2005). "The plaintiff cannot be said to have carried this burden so long as the statement appears *substantially* true." *Id.* at 1021 (original emphasis). Under this standard, "it is sufficient if the *substance* of the charge be proved true, irrespective of slight inaccuracy in the details," which "do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge be justified." *Id.* (original emphasis; quotation omitted). "Put another way, the statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Id.* (quoting *Masson v. New Yorker Magazine*, 501 U.S. 496, 517 (1991)). The question may be resolved by the Court in the first instance where, as here, there is

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no material falsity as a matter of law. *See Jackson*, 10 Cal. App. 5th at 1262-63 (granting anti-SLAPP motion on substantial truth grounds); *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 23 (2007) (same).

Plaintiff cannot show that calling him a "Rams executive" is materially false because he admits that he is "one of eight ticket sales account executives." Compl. ¶ 7. Indeed, in context, the Article makes clear that Plaintiff was "an account executive in ticket sales." Compl., Ex. D. Thus, any difference between his exact title and the description used by Beasley is a "slight discrepancy" at best, which "will not defeat a substantial truth defense." *Reed v. Gallagher*, 248 Cal. App. 4th 841, 861 (2016) (citations omitted). *See also De Havilland v. FX Networks, LLC*, 21 Cal. App. 5th 845, 867 (2018) (portraying plaintiff as having called her sister a "bitch" instead of "dragon lady" was substantially true).

Further, who received the Plaintiff's text is irrelevant; the "gist" and "sting" of the Article and Podcast was that Plaintiff called Chung a "bitch" because of his injury and Chung posted the text messages, while stating that sending texts such as those sent by Plaintiff about someone who just broke their arm was disrespectful, all of which is true. *Jackson*, 10 Cal. App. 5th at 1262 (holding that statements that plaintiff had cosmetic surgery on her face was substantially true even though plaintiff had only had plastic surgery on her body); *Carver*, 135 Cal. App. 4th at 357-358 (article misstating number of malpractice complaints against doctor did not materially change "gist" of article). *See also Price v. Stossel*, 620 F.3d 992, 1001 (9th Cir. 2010) ("*Masson* explained the common law principle that inaccuracies alone do not render a statement false if there remains 'substantial truth' to what was said [;] ... the alteration [must] change[ ] the meaning in a material way."). Because Plaintiff admits to having made the statements in the text messages, whether he made them to Chung or Weymouth does not change the effect of the text messages in the mind of the reader.

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Consequently, Plaintiff cannot show material falsity as required for a defamation claim. *See Gilbert*, 147 Cal. App. 4th at 32 (striking libel claims for lack of falsity where "discrepancy … did not detract from the essential truth of the charge").

2. The Statements Are Not Defamatory.

As a matter of black-letter law, "[d]efamation is an invasion of the interest in reputation." *Smith v. Maldonado*, 72 Cal. App. 4th 637, 645 (1999). Accordingly, a defamation claim cannot survive where, as here, the allegedly false statement does not hurt the plaintiff's reputation. *See, e.g., Gang v. Hughes*, 111 F. Supp. 27, 29 (S.D. Cal. 1953) ("[i]t is not sufficient, standing alone, that the language is unpleasant and annoys or irks plaintiff, and subjects him to jests or banter, so as to affect his feelings"). Rather, the language must expose the plaintiff "to hatred, contempt, ridicule, or obloquy," or "cause[] him to be shunned or avoided". *Brodeur v. Atlas Entm't, Inc.*, 248 Cal. App. 4th 665, 678 (2016) (citation and internal quotations omitted). The statement also must be one that either "has a natural tendency to injure," or "causes special damage." *Smith*, 72 Cal. App. 4th at 645. Plaintiff's lawsuit ignores this critical point by failing to allege any defamatory meaning as to the purported false statements.

First, being called a "Rams Executive" instead of a "ticket sales account executive" is not defamatory because even if materially false, which is not, it does not expose Plaintiff to any contempt, ridicule or obloquy. *See, e.g.*, *Nelson v. Bd. of Educ., Country Club Hills Sch. Dist. 160*, 292 F. Supp. 3d 792, 800 (N.D. Ill. 2017) (rejecting contention from a former principal that "on its face the title 'assistant principal' is insulting"). In fact, to the extent there is any mischaracterization of Plaintiff's role with the Rams, it is a more positive one – describing Plaintiff as having a bigger and better job with the Rams. Moreover, the statement is not defamatory because while the headline called Plaintiff a "Rams Executive," the body of the article referred to him as an "account executive in ticket sales." *See*

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Morningstar, Inc. v. Superior Court, 23 Cal. App. 4th 676, 694 (1994) (commentary with a title accused plaintiff of "lies" was not actionable given what the rest of "the article, title, text and context" conveyed).

Second, stating that the text messages were between Chung and Plaintiff is also not defamatory. For example, recently the California Court of Appeals in *De Havilland*, 21 Cal. App. 5th at 867, held that falsely depicting someone as having granted an interview is not defamatory because it "is not conduct that would subject a person to hatred, contempt, ridicule, or obloquy." Similarly, here, nothing about attributing the conversation to be between Plaintiff and Chung, instead of Plaintiff and Weymouth, exposes Plaintiff "to hatred, contempt, ridicule, or obloquy." *Id.* Indeed, it only raises the question of whether it is worse to call someone a name to his face or behind his back.

At most, Plaintiff, blending together the two alleged false statements, alleges that it "suggests that he was a leadership figure who irresponsibly and heartlessly taunted a player knowing he had just suffered serious injury." Compl. ¶ 54. But Plaintiff did in fact taunt Chung (even if not directly to him). Thus, the alleged false parts of the Article and Podcast – that Plaintiff, an alleged high ranking executive at the Rams, sent these texts directly to Chung – are not defamatory. *See Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1262 (2017) ("[T]he allegedly false part of the posts (the cause of the breakup) did not expose Jackson to contempt, ridicule or other reputational injury.")

B. Plaintiff Cannot State a Claim for Disclosure of Private Facts.

To state a cause of action for disclosure of private facts, a plaintiff must show: (1) the public disclosure; (2) of a private fact; (3) which would be offensive to the reasonable person; and (4) which is not of legitimate public concern. *Shulman v. Group W Productions*, 18 Cal. 4th 200, 214 (1998). Thus, critical to any such cause of action, "the facts disclosed must be *private facts*, and not public ones." *Forsher v. Bugliosi*, 26 Cal. 3d 792, 808 (1980) (emphasis in original).

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Once an allegedly private fact has been publicly disclosed, it no longer is a private fact, and its subsequent disclosure is not an actionable invasion of privacy. *Moreno v. Hanford Sentinel, Inc.*, 172 Cal. App. 4th 1125, 1130 (2009) ("A matter that is already public or that has previously become part of the public domain is not private"); *Four Navy Seals v. Associated Press*, 413 F. Supp. 2d 1136, 1144 (S.D. Cal. 2005) (dismissing plaintiff's disclosure of private facts claim in part because the photos has been previously posted and "no privacy for a matter already in the public domain").

Here, by Plaintiff's own allegations, the text messages were already public by the time Beasley posted the Article and aired the Podcast. As he alleges, only after Chung publicly published the text messages on February 6, did Beasley publish the Article. Compl. ¶ 48. The Podcast aired two days later, on February 8. *Id.* ¶ 49. Therefore, Beasley's republication of the Post did not disclose any private facts. *See Sipple v. Chronicle Publ'g Co.*, 154 Cal. App. 3d 1040, 1048 (1984) (holding that the Los Angeles Times was exempt from liability from a claim for disclosure of private facts because it "only republished the Chronicle article which implied that appellant was gay").

Nor is it relevant that Chung deleted the posts after a few hours. As the court explained in *Moreno*, where it rejected a similar argument, "[t]he publication was not so obscure or transient that it was not accessed by others." 172 Cal. App. 4th at 1130. In fact, here, by Plaintiff's own allegations the Post was accessed by others before Beasley published the Article, including by the co-defendants. *See* Compl. ¶¶ 41-46.

C. Plaintiff Fails to State a False Light Claim.

Plaintiff's third cause of action purports to state a claim for false light based on precisely the same conduct and statements that are alleged as the basis for his defamation claim. *See* Compl. ¶¶ 78-84. Consequently, this claim is entirely

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duplicative of his defamation claim, and fails for the same reasons set out above. *Selleck v. Globe International*, 166 Cal. App. 3d 1123, 1136 (1985).

Any attempt by Plaintiff to distinguish his defamation and false light claims has *no* support in California law. Where, as here, "a false light claim is coupled with a defamation claim, the false light claim is *essentially superfluous*, and stands or falls on whether it meets the same requirements as the defamation cause of action." *Eisenberg v. Alameda Newsp., Inc.*, 74 Cal. App. 4th 1359, 1385 n.13 (1999) (emphasis added); *see also Tamkin*, 193 Cal. App. 4th 133, 149. "The collapse of the defamation claim *spells the demise of all other causes of action* in the same complaint which allegedly arise from the same publication." *Gilbert*, 147 Cal. App. 4th at 34 (emphasis added). Here, because Plaintiff's false light claim arises from precisely the same statements at issue in his defamation claim, no "separate analysis" is required. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 694 (9th Cir., 1998).

The Court of Appeal's recent decision in *Jackson* is illustrative. There, the defendant, boxer Floyd Mayweather, posted on social media that he had broken up with the plaintiff because she had an abortion. 10 Cal. App. 5th at 1247. She sued for defamation, false light, and other torts. *Id.* at 1248. The court granted Mayweather's SLAPP motion as to both claims: his statements about the reasons for the break-up, even if false, were not defamatory, because they did not subject the plaintiff "to contempt, ridicule or other reputational injury" (*id.* at 1262), and the absence of a defamatory statement was a "fatal defect" that also required dismissal of her false light claim. *Id*. at 1264-65. The same rule applies here.

D. Plaintiff's Intentional Infliction of Emotional Distress Claim Fails.

Plaintiff's intentional infliction of emotional distress claim also must be stricken. *First*, to the extent it is based on the same allegations as his defamation claim, it must be stricken for the same reasons as that claim. Compl. ¶¶ 85-90; *see Gilbert*, 147 Cal. App. 4th at 34 (striking emotional distress claims under SLAPP

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statute that were based on nonactionable statements); *Silva v. Hearst Corp.*, 97-cv-4142-DDP(BQRx), 1997 WL 33798080, *3 (C.D. Cal. Aug. 21, 1997) (dismissing emotional distress claim based on same allegations as defamation claim).

Second, none of Plaintiff's allegations, even if true, is egregious enough to be actionable. To state an intentional infliction of emotional distress claim, the alleged conduct must be "beyond all bounds of reasonable decency." *Comstock v. Aber*, 212 Cal. App. 4th 931, 954 (2012); *Hughes v. Pair*, 46 Cal. 4th 1035, 1050-1051 (2009) ("the defendant's conduct must be intended to inflict injury or engaged in with the realization that injury will result"). None of the conduct alleged here meets this strict test. *See Koch v. Goldway*, 817 F.2d 507, 510 (9th Cir. 1987) (even defendant's "reprehensible" "vicious slur" about the plaintiff likening him to a Nazi war criminal failed to reach the "level of conduct necessary to state a claim for intentional infliction of emotional distress").

Third, Plaintiff has not alleged any facts to show that he suffered "severe emotional distress," which is emotional distress of such substantial or enduring quality "that no reasonable [person] in civilized society should be expected to endure it." *Hughes*, 46 Cal. 4th at 1051 (citations omitted). "The California Supreme Court has set a 'high bar' for what can constitute severe distress." *Wong v. Jing*, 189 Cal. App. 4th 1354, 1376 (2010) (quotation omitted). In *Wong*, the court struck an emotional distress claim based on statements accusing a dentist of endangering a child and warning patients to "[a]void her like a disease," explaining that the plaintiff's "alleged emotional reaction to being professionally criticized … however unjustified or defamatory that criticism might have been, does not constitute the sort of severe emotional distress of such lasting and enduring quality that no reasonable person should be expected to endure." *Id.* at 1361, 1377. Plaintiff's boilerplate allegations and conclusory assertions of distress do not satisfy this requirement. Compl. ¶¶ 59, 88.

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V. CONCLUSION

Plaintiff's claims are barred as a matter of law by well-established principles, and no amendment can salvage them. *See Steckman v. Hart Brewing*, 143 F.3d 1293, 1298 (9th Cir. 1998) (dismissal with prejudice proper where "any amendment would be an exercise in futility"); *Sarver*, 813 F.3d at 906 (striking claims with prejudice under SLAPP statute). Therefore, Beasley respectfully requests that this Court grant the Motion, and strike Plaintiff's First, Second, Third, and Fourth Causes of Action against them with prejudice.

DATED: June 3, 2019

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